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Plaintiff Promotion in Motion, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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THE HERSHEY COMPANY and HERSHEY	:	
CHOCOLATE & CONFECTIONERY	:	
CORPORATION,	:	
Plaintiffs/Counterclaim Defendants,	:	
v.	:	07-CV-1601 (SDW) (MCA)
PROMOTION IN MOTION, INC.,	:	
Defendant/Counterclaim Plaintiff.	:	
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**DECLARATION OF RONALD R. BUTTERS, PH.D., IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
ON DEFENDANT'S COUNTERCLAIM AND AFFIRMATIVE
DEFENSE BASED ON GENERICNESS**

RONALD R. BUTTERS, PH.D., pursuant to 28 U.S.C. §1746, declares as follows:

1. I am a Professor Emeritus at Duke University, where I have served since 1967 as a member of the faculty of the Departments of English and Cultural Anthropology and at various times chaired both the English Department and Linguistics Program. I have a Ph.D. in English with a concentration in linguistics from the University of Iowa, Iowa City, where I received advanced training in the study of linguistics and literature. I serve on the Advisory Board of the *New Oxford American Dictionary*, published by the Oxford University Press, and I am an active member of the American Dialect Society, the American Name Society, the Dictionary Society of North America, the Linguistic Society of America, the Southeastern Conference on Linguistics, the International Language and Law Association, and the International Association of Forensic Linguists (of which I am currently president).

2. I submit this declaration in opposition to the motion by Plaintiffs The Hershey Company and Hershey Chocolate & Confectionery Corporation (collectively, “Hershey”) for partial summary judgment on Promotion in Motion’s (“PIM”) counterclaim and affirmative defense based on genericness. I make this declaration based on my personal knowledge and, if called as a witness, I would testify competently as to the matters contained herein.

3. I was asked by counsel for PIM to provide my professional opinion as a linguistic expert regarding the history, meaning, and usage in American English of the word *kiss* (in its singular and plural forms), with particular reference to its status as a term used in commerce to refer to candy in general and chocolate candy in particular. A true and correct copy of my expert

report, with Exhibits A & B thereto, is attached hereto as Exhibit 1 and is incorporated herein by reference.¹

4. I also was asked by counsel for PIM to evaluate the report submitted on behalf of Hershey by Dr. Geoffrey Nunberg concerning whether the terms kiss and kisses were or are generic. A true and correct copy of my expert rebuttal report, with Exhibits A & B thereto, is attached hereto as Exhibit 2 and is incorporated herein by reference.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON MARCH 14, 2010 IN Durham, NORTH CAROLINA.



RONALD R. BUTTERS, PH.D.

¹ The documents I consulted in preparation for my expert report were attached as Exhibit C thereto. Since many of the relevant excerpts from these original source materials have been reproduced in part or whole within the body of my report and I understand that numerous source documents are attached as separate exhibits to the declarations of Michael Rosenberg and Richard S. Mandel in opposition to Hershey's summary judgment motion on genericness, given their voluminous nature, these source documents are not submitted with Exhibit 1 hereto but can be made available upon request by the Court.